IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. Civil Misc. Appeal No.2105/2006

Haluka V/s Nirottam & Anr.

Date of Order : 19th September, 2006

HON'BLE MR. R.S. CHAUHAN, J.

Mr.Anil Jain, for the appellant.
Mr.C.P. Meena, for the respondents.

By Court:

The appellant has challenged the order dated 18.03.2006 passed by the District Judge, Dholpur whereby he has dismissed the appellant's application under Order 33 Rule 2 of Civil Procedure Code (henceforth to be referred to as 'the Code', for short).

The brief facts of the case are that the plaintiff had filed a suit for compensation of Rs.2 lacs against the defendant on the ground that the defendant had shot the plaintiff as a consequence of which he had lost the vision of left eye and had sustained injuries on his face. However, as the

plaintiff was a poor person, he had filed an application under Order 33 of the Code for permitting him to contest the suit as an indigent person. However, vide order dated 18.03.2006 the said application has been dismissed. Hence, this appeal before this Court.

Mr. Anil Jain, the learned counsel for the appellant, has argued that only reason given by the learned Judge is that the plaintiff had not mentioned his movable and immovable property in the application under Order 33 of the Code. However, according to the learned counsel for the appellant, the plaintiff had clearly stated in his application that “he does not owe or possess any movable or immovable property”. Therefore, the said application has been dismissed without appreciating the contents of the application itself.

On the other hand, Mr. C.P. Meena, the learned counsel for the respondents, had argued that despite the service of notice on the plaintiff, the plaintiff did not appear before the “Munsrim”. Therefore, the application has rightly been rejected. He has, thus,

supported the impugned order.

We have heard both the learned counsels for the parties and have perused the impugned order.

The poverty of our country is not a secret. Million of our countrymen continue to struggle with poverty. Because of their economic hardship, many are discouraged to voice their rights granting by them by the constitution or by other laws. Poverty cannot be a basis for denying justice to the people. Therefore, while dealing with the cases of the indigent persons, the judiciary has to show extra-sensitivity to their plight. A bare perusal of the order passed by the learned Judge clearly reveals that the order was passed in a hasty and mechanical manner. Firstly, the learned Judge should have examined whether the notices issued by the “Munsrim”, were duly served upon the appellant or not. Moreover, once a request had been made by the appellant's counsel to adjourn the case as the appellant could not be present before the court, no reason has been given for not adjourning the case and for deciding the application on that very date.

Thirdly, the appellant had clearly stated that he does not own any movable or immovable property. At the initial stage, there was no reason to doubt this statement. Therefore, merely on the ground that the details of movable or immovable property have not been given, could not find the basis of rejecting the application.

Therefore, while quashing and setting aside the order dated 18.3.2006, we remand the case back to the learned Judge and direct him to re-issue a notice through the Munsrim to the appellant. We also direct the learned Judge to give ample opportunity to the appellant to prove the fact that he is, indeed, indigent. We also direct the appellant to appear before the Munsrim and to establish the fact of his being indigent.

In the result, this appeal is allowed with above directions.

(R.S. CHAUHAN), J.

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